

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD\*  
CHARLES T. KAPPLER  
JOHN H. DOYLE\*  
JAMES C. MARTIN JR.\*

\*ALSO ADMITTED IN NEW YORK  
\*ALSO ADMITTED IN MARYLAND

LAW OFFICES  
**ALVORD AND ALVORD**

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WASHINGTON, D.C.

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1-361A019

December 26, 1991

17641  
RECORDATION NO. 17641 FILED IN New Number

DEC 27 1991 - 11:00 AM

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) fully executed and acknowledged copies of a Non-Recourse Security and Loan Agreement dated as of December 27, 1991, a primary document as defined in the Commission's Rules for the Recordation of Document under 49 C.F.R. Section 1177.

The names and addresses of the parties to the enclosed document are:

Lender: Hitachi Credit America Corporation  
777 West Putnam Avenue  
Greenwich, Connecticut 06830

Borrower: KeyCorp Leasing Ltd.  
One Key Corp Plaza  
P.O. Box 655  
Albany, New York 12201

A description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached hereto made a part hereof. *WCCX 10001-10095*

Also enclosed is a check in the amount of \$16 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return a stamped copy of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

DEC 27 11 21 AM '91  
MOTOR OPERATING UNIT

*C. T. Kappler*

*Charles T. Kappler*

Mr. Sidney L. Strickland, Jr.  
December 26, 1991  
Page Two

A short summary of the enclosed primary document to appear in the Commission's Index is:

Non-Recourse Security and Loan Agreement dated as of December 27, 1991 between Hitachi Credit America Corporation, as Lender, and KeyCorp Leasing Ltd., as Borrower, covering 95 new 100-ton steel 3805 cubic foot triple hopper cars.

*WCCX 10001-10095*

Very truly yours,

Charles T. Kappler

CTK/bg  
Enclosures

12/27/91

Interstate Commerce Commission  
Washington, D.C. 20423

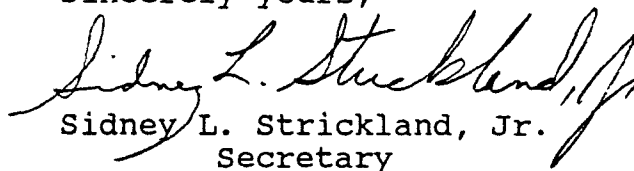
OFFICE OF THE SECRETARY

Charles T. Kappler  
Alvord & Alvord  
918 16th St. N.W.  
Washington, D.C. 20005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/27/91 at 11:30am, and assigned recordation number(s). 17641, 17642 & 17642-A

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

17641  
DEC 27 1991 -11 23 AM  
INTERSTATE COMMERCE COMMISSION

NON-RECOURSE SECURITY AND LOAN AGREEMENT

Dated as of December 27, 1991.

Lender: Hitachi Credit America Corp.  
777 West Putnam Avenue  
Greenwich, Connecticut 06830  
Attention: Mr. William Besgen

Borrower: Keycorp Leasing Ltd.  
One Keycorp Plaza, 7th Floor  
Albany, New York 12207  
Attention: Mr. Frederick E. Wolfert

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FILED WITH THE INTERSTATE COMMERCE COMMISSION  
PURSUANT TO 49 U.S.C. §11303  
ON DECEMBER 27, 1991  
AT \_\_:\_\_ A.M.  
RECORDATION NUMBER \_\_\_\_\_

THIS NON-RECOURSE SECURITY AND LOAN AGREEMENT, dated as of December 27, 1991, is entered into between Keycorp Leasing Ltd. (the "Borrower") and Hitachi Credit America Corp. (the "Lender"). In consideration of the mutual agreements contained herein, the parties hereto agree as follows:

1. Agreements to Borrow and Lend; Use of Proceeds. (a) Subject to the terms and conditions of this Agreement, the Lender agrees to lend to the Borrower and the Borrower agrees to borrow from the Lender on December 27, 1991 (the "Closing Date") the amount of \$2,428,120.80 (the "Loan"). The proceeds of the Loan shall be applied toward payment, to Johnstown America Corporation ("Seller"), of the purchase price of the equipment (the "Equipment") described in Lease Supplement No. 1 (the "Lease Supplement") to the Lease Agreement (the "Lease"), dated as of December 27, 1991, between the Borrower and Westmoreland Coal Company (the "Lessee"); a true, complete and correct copy of which has been furnished to the Lender on or prior to the Closing Date. The Lease Supplement and the Lease, to the extent it relates to the Lease Supplement, collectively, the "Lease".

(b) As used herein, the term "Business Day" shall mean any day other than (a) a Saturday or Sunday, or (b) a legal holiday in the State of Connecticut or in the State of New York, or (c) a day on which banking or savings and loan institutions in the State of Connecticut or the State of New York are authorized or obligated by law or executive order to be closed.

2. Closing; Conditions Precedent. (a) The obligation of the Lender to make the Loan hereunder is subject to the performance by the Borrower of all of its covenants, agreements and other obligations under this Agreement required to be performed on or prior to the date of such Loan and to the further condition that Thacher Proffitt & Wood, counsel for the Lender, shall have received on behalf of, and to the satisfaction of, the Lender each of the following:

(i) Purchase Agreement Assignment. A copy of the executed Purchase Agreement Assignment, dated as of December 27, 1991 (the "Purchase Agreement") among Helm Financial Corporation and the Borrower, together with the executed exhibits thereto in the form of Exhibit A hereto;

(ii) Invoice for the Equipment. (A) An invoice from the Seller of the Equipment setting forth the full purchase price of the Equipment, (B) a warranty bill of sale from the Seller of the Equipment to the Borrower, and (C) a written authorization letter from the Borrower directing the Lender to pay the proceeds of the Loan directly to the Seller of the Equipment;

(iii) Delivery of Chattel Paper. The executed "Secured Party's Original" counterpart of the Lease Supplement and an executed counterpart of the Lease;

(iv) Evidence of Insurance. Evidence of insurance required to be maintained by the Lessee pursuant to Lease Supplement and the Lease;

(v) Notice of Assignment of the Lease. A Notice of Assignment, in the form of Exhibit C hereto, executed by the Lessee, containing the Lessee's consent to assignment by the Borrower of the Borrower's rights under the Lease;

(vi) Secretary's Certificate of the Lessee. A certificate of the Corporate Secretary or Assistant Corporate Secretary of Lessee, in the form annexed hereto as Exhibit E, together with the attachments required to be furnished pursuant to such certificate;

(vii) Promissory Note. A non-recourse secured promissory note, payable to the Lender, substantially in the form annexed hereto as Exhibit B (the "Note"), in the aggregate principal amount of the Loan and dated the Closing Date;

(viii) Evidence of Perfection of Security Interest. Evidence, satisfactory to the Lender, that the Lease, the Lease Supplement and this Agreement have been filed with the Interstate Commerce Commission;

(ix) Opinion of Counsel of Borrower. An opinion of counsel for the Borrower, in form and scope satisfactory to the Lender, to the effect that (A) the Borrower is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware, and has full corporate power and authority to enter into and perform its obligations under the Lease, this Agreement, the Purchase Agreement and the Note, (B) the execution, delivery and performance by the Borrower of the Lease, this Agreement, the Purchase Agreement and the Note have been duly authorized by all necessary corporate action on the part of the Borrower, the Lease, this Agreement, the Purchase Agreement and the Note have been duly executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower, enforceable in accordance with their terms; (C) the Lease, this Agreement, the Purchase Agreement and the Note are not inconsistent with the Borrower's Certificate of Incorporation or By-Laws, do not contravene any law or governmental rule, regulation or order applicable to the Borrower, do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound; (D) no consent or approval of, giving of notice to, registration with, or taking of any other action in respect of or by, any state, federal or other governmental authority or agency is required with respect to the execution, delivery and performance by the Borrower of the Lease, this Agreement, the Purchase Agreement and the Note or, if any such consent, approval, notice, registration or action is required, it has been obtained and a true copy thereof has been provided to counsel for the Lender; and (E) there are no actions, suits or proceedings pending or, to the knowledge of Borrower's counsel, threatened against or affecting the Borrower in any court or before any governmental commission, board or authority which, if adversely determined, would have a material adverse effect on the ability of the Borrower to perform its obligations under the Lease, this Agreement, the Purchase Agreement and the Note;

(x) Secretary's Certificate of Borrower. A certificate of a Corporate Secretary or Assistant Corporate Secretary of the Borrower in the form annexed hereto as Exhibit D, together with the attachments required to be furnished pursuant to such certificate;

(xi) Opinion of Counsel to the Lessee. An opinion letter of counsel to the Lessee, in form and scope satisfactory to the Lender, to the effect that (1) the Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware, is duly qualified to do business in each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, and has full corporate power and authority to enter into and perform its obligations under the Lease; (2) the execution, delivery and performance by the Lessee of the Lease have been duly executed and delivered by the Lessee, and the Lease is the legal, valid and binding obligation of the Lessee, enforceable in accordance with its terms; (3) the Lease is not inconsistent with the Lessee's Certificate of Incorporation or By-Laws, does not contravene any law or governmental rule, regulation or order applicable to the Lessee, does not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound; (4) no consent or approval of, giving of notice to, registration with, or taking of any other action in respect of or by, any state, federal or other governmental authority or agency is required with respect to the execution, delivery and performance by the Lessee of the Lease or, if any such consent, approval, notice, registration or action is required, it has been obtained; and (5) there are no actions, suits or proceedings pending, or to the knowledge of the Lessee's counsel, threatened against or affecting the Lessee in any court or before any governmental commission, board or authority which, if adversely determined, would have a material adverse effect on the ability of the Lessee to perform its obligations under the Lease;

(xii) Payment of Facility Fee. The Lender shall have received the amount of \$25,000.00 in payment of its facility fee;

(xiii) Payment of Equity Shortfall. The Borrower shall, simultaneously with the disbursement of the Loan, wire transfer the amount of \$1,500,000.00 to the Seller, which amount together with the proceeds of the Loan will be paid to the Seller in satisfaction of the purchase price of the Equipment;

(xiv) Opinion of Special ICC Counsel to the Borrower. The Lender shall have received an opinion letter of special counsel to the Borrower regarding the recordation and priority of the Lender's security interest in the Equipment;

(xv) No Legal Prohibition. The Lender's purchase of and payment for the Note (i) shall not be prohibited by any applicable law or governmental regulation, including, without limitation, Regulations G, T, U or X of the Board

of Governors of the Federal Reserve System, (ii) shall not subject the Lender to any penalty or, in its reasonable judgment, other onerous condition under or pursuant to any applicable law or governmental relation, and (iii) shall be permitted by the laws and regulations of the jurisdictions to which the Lender is subject. If requested by the Lender, the Borrower shall deliver to the Lender factual certificates or other evidence (to the extent that such evidence is in the Borrower's control), in form and substance satisfactory to the Lender, to enable the Lender to establish compliance with this condition; and

(xvi) Certificate of Borrower. The Lender shall have received a certificate from an officer of the Borrower stating that the conditions set forth in Section 2(b) hereof have been satisfied.

Each opinion of counsel delivered pursuant to paragraphs (ix), (xi) or (xiv) hereof may be subject to appropriate qualification as to (i) applicable bankruptcy law and other similar laws affecting creditors' rights generally, (ii) the availability of equitable remedies, and (iii) the effect of certain laws and judicial decisions upon the enforceability of certain remedial provisions provided in this Agreement, the Purchase Agreement and the Lease, provided that the opinion of counsel shall further state that none of such laws then in force and none of such judicial decisions will, in the opinion of such counsel, make the rights and remedies provided in this Agreement, the Purchase Agreement or the Lease, as the case may be, taken as a whole, inadequate for enforcing payment of the Note and for enforcing the security interest provided by this Agreement.

(b) The obligations of the Borrower on the Closing Date to accept the Loan and to make the Equity Shortfall referred to in Section 2(a)(xiii) hereof shall be subject to the fulfillment, on or before the Closing Date, of the following conditions precedent:

(i) Lender's Loan. The Lender shall have concurrently made the full amount of the Loan available in accordance with the terms hereof;

(ii) Illegality. No change shall have occurred after the date of this Agreement in Applicable Law (as defined in the Lease) by any Governmental Authority (as defined in the Lease) that, as determined by the Borrower in the reasonable exercise of its discretion, would make it illegal for the Borrower to issue the Note or enter into the Lease;

(iii) No Material Change to the Code. No amendment, modification, addition or change shall have been made to the Code (as defined in the Lease), regulations under the Code, published Internal Revenue Service Revenue Procedures, Revenue Rulings or other administrative interpretations or applicable judicial precedents that, in the opinion of the Borrower, would render invalid any of the assumptions set forth in the Tax Indemnity Agreement (as defined in the Lease);



(iv) Representations True and Correct. Each representation and warranty contained in this Agreement and the Lease shall be true and accurate as of the Closing Date;

(v) Operative Documents. The Borrower shall have received the Tax Indemnity Agreement, each of the documents set forth in Sections 2(a) and (b) hereof, and each of the Operative Documents (as defined in the Lease), each in form and substance reasonably satisfactory to the Borrower;

(vi) Other Documents. The Borrower shall have received such other documents and assurances, and such other conditions shall have been satisfied, as the Borrower may reasonably request;

(vii) Appraisal. An appraisal from Independent Equipment Company (the "Appraisal") with respect to the Equipment to the effect that (A) the Equipment (1) has an economic useful life equal to at least 120% of the Basic Term, (2) will have a value equal to at least 20% of the original cost of the Equipment, at the end of the Basic Term (without regard to inflation or deflation), and (3) has a Fair Market Value (as defined in the Lease) at least equal to the original cost of the Equipment, (B) the Equipment is not "limited use" property (as defined in IRS Revenue Procedure 76-30), and (C) no additions or modifications are necessary for the Equipment to be suitable for its intended use;

(viii) Appropriate Action. All appropriate action to have been taken prior to the Closing Date by the ICC, in connection with this transaction, shall have been taken;

(ix) Certificate of Lender. The Borrower shall have received a certificate from an officer of the Lender stating that the conditions precedent in Section 2(a) hereof have been satisfied; and

(x) Opinions. The Borrower shall have received favorable opinions, dated the Delivery Date, addressed to the Borrower from (1) Philip Weinstock, Esq., counsel to Lessee and (2) Alvord & Alvord, special ICC Counsel.

(c) On the Closing Date, the Lender shall make the Loan, by bank wire transfer or certified check in immediately available funds, in accordance with instructions of the Borrower; the Borrower and the Lender hereby agree that the investment by the Borrower in the Equipment, equal to the difference between the purchase price of the Equipment and the aggregate amount of the Loan, is a condition precedent to the making of the Loan and is essential to the adequate protection of the Lender's security interest in the Collateral.

3. Repayment. (a) The principal of and interest on the Loan shall be repaid by the Borrower to the Lender in 114 consecutive monthly installments of principal and interest

payable on the twenty-seventh day of each month, consisting of 113 payments of \$32,775.00 each, commencing January 27, 1992 and ending May 27, 2001, followed by one payment of \$27,274.47 on June 27, 2001, but in no event shall the final installment be less than the outstanding principal balance of, plus accrued interest on, the Note. The unpaid balance of the Loan shall bear interest from the Closing Date at the rate of 9.75% per annum. Prior to the issuance of the Note, the Lender shall furnish to the Borrower a schedule showing the respective amounts of principal and interest payable on each installment date. All interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months. The Borrower will pay to the Lender interest, computed at a rate per annum equal to the sum of (a) the base rate, as announced by Citibank, N.A. at its principal office in New York City on the date of such default plus (b) 2% (the sum of (a) and (b), the "Overdue Rate"), but in no event at a rate greater than that permitted by applicable law, on all installments of principal and interest remaining unpaid after the same shall have become due and payable. All payments shall be made in lawful money of the United States of America. If any scheduled payment date shall not be a Business Day, then the payment otherwise due thereon shall be due and payable on the next succeeding Business Day, without additional interest for such non-Business Days.

(b) Casualty. All risk of an Event of Loss, as defined in the Lease, shall be borne by the Lessee pursuant to the Lease and all insurance policies maintained by the Lessee pursuant to the Lease shall (i) name the Lender and the Borrower as additional insureds as their respective interests may appear and (ii) contain a covenant of the insurance company that it will provide the Lender with at least 30 days' prior written notice of any alteration in the terms of such policy or of the expiration or cancellation thereof. The Borrower agrees to provide to the Lender at any time and from time to time upon its request therefor, copies of all policies, certificates or other evidence provided by the Lessee regarding compliance with the terms of Section 10 of the Lease. The Borrower hereby assigns and sets over unto the Lender, and grants to the Lender, a security interest in all monies ("Insurance Proceeds") which may become payable on account of any Event of Loss or any such insurance policies. If an Event of Loss has occurred with respect to any item of Equipment (a "Loss Item") and with respect to which the Lessee has elected not to repair or replace such Loss Item within the time period required by the Lease, all Stipulated Loss Value payments required to be paid pursuant to the Lease (including all Insurance Proceeds in respect thereof) shall be paid to the Lender and the unpaid principal of the Loan allocable to the Loss Item (determined by multiplying the then outstanding principal amount of the Note by a fraction the numerator of which is the cost of such Loss Item(s) as set forth in the Seller's invoice and the denominator of which is the total cost of all items of Equipment subject to the Lease immediately prior to such Event of Loss), together with accrued interest thereon, shall become due and payable on the date the Stipulated Loss Value is payable in respect of the Loss Items. All such Stipulated Loss Value payments and Insurance Proceeds shall be applied by the Lender on the date of termination of the Lease with respect to such Loss Items, in accordance with Section 3(c) hereof. Upon any partial prepayment of principal of the Note, each installment thereafter payable on the Note shall be reduced in the same proportion as the amount of such prepayment bears to the principal amount of the Note outstanding immediately prior to such partial prepayment and such that each remaining installment of principal and interest shall be not more than the corresponding installment of Basic

Rent under the Lease after any reduction thereof for termination of Loss Items. The Lender thereupon shall submit to the Borrower a new schedule of installment payments to be made after any such partial prepayment on the Note, such new schedule to reflect such proportional reduction, but in any event to provide for the complete amortization of the principal and interest payable on the Note on the original maturity date of the Note.

(c) Assignment of Rents; Application of Proceeds. The Borrower agrees to direct the Lessee to make all payments of Basic Rent (as defined in the Lease) and all other Lease Payments (hereinafter defined) to be made by it under the Lease directly to the Lender pursuant to a Notice of Assignment in the form of Exhibit C hereto. The Borrower acknowledges that it has no right to receive payments assigned to the Lender, and agrees that should it receive any such payments directed to be made to the Lender, any proceeds, including Insurance Proceeds, for or with respect to the Equipment under the Lease or as the result of the sale, lease, Event of Loss, re-lease or other disposition thereof, the Borrower will promptly forward such payments to the Lender. The Lender agrees to apply amounts from time to time received by it (from the Lessee, the Borrower or otherwise) with respect to the Lease or the Equipment first, to the payment of interest on the Loan accrued to the date of such payment, second, to the payment of principal on the Loan then due, third, for reimbursement or other payment to the Lender of amounts payable to the Lender pursuant to this Agreement, or the Lease, and not constituting principal of or interest on the Loan then due, and fourth, if no Default hereunder, or any event which (with the giving of notice or the lapse of time or both) would become a Default, shall have occurred and be continuing, to pay any balance to the Borrower or its designee promptly after the receipt of immediately available funds or the equivalent thereof by the Lender; provided, however, that if a Default shall have occurred (and shall not have been cured in accordance with the provisions of Section 8(d) hereof), then all such excess amounts shall be held by the Lender and deposited in a day-of-deposit / day-of-withdrawal account, earning the then prevailing interest rate for such accounts, and applied to amounts thereafter due to the Lender under this Agreement. The Borrower acknowledges that the Lender shall not be compelled to accept any performance as effecting payment or reimbursement of amounts payable to them under this Agreement, except for that performance specifically contemplated herein.

4. Security. (a) Grant of Security Interest. As security for the performance and observance of the obligations of the Borrower hereunder, and as security for the due and punctual payment of the principal of and premium, if any, and interest on the Note according to its terms, the Borrower does hereby assign to the Lender and grant to the Lender, its successors and assigns, a security interest in all of the Borrower's right (including its power to convey title thereto), title and interest (but none of its obligations) in and to (the following hereinafter collectively defined to be the "Collateral"), subject to the Excepted Rights in the Collateral (as defined in subparagraph (b) hereof): (i) the Lease, (ii) all payments of Basic Rent, Supplemental Rent and other amounts (including any insurance or condemnation proceeds in respect of any of the foregoing) due or to become due under the Lease (collectively, "Lease Payments"), (iii) the Equipment and all income and proceeds therefrom (whether resulting from sale, lease, re-lease, Event of Loss, or any other reason), including, without limitation, its

rights, but none of its obligations, under the Purchase Agreement, (iv) any other security granted for the obligations of the Lessee under the Lease, (v) any sublease of the Equipment, or assignment of the Lease, by the Lessee and the payments due and to become due thereunder, to the extent such sublease is assigned to the Borrower, and (vi) all income and proceeds of any of the foregoing. The Borrower shall have no right to compel the Lender to accept as security any performance or other security, other than that specifically herein set forth. The Borrower hereby waives its right to receive any amounts of Basic Rent (or any overdue interest thereon) due on or after the Closing Date.

(b) Excepted Rights in Collateral. Notwithstanding the foregoing, there are expressly excepted and reserved from the assignment under, grant of security interest by, and operation of this Agreement, the following rights, interests and privileges (collectively, the "Excepted Rights in Collateral") and nothing in this Agreement, the Note, the Lease or any other document executed in connection therewith, shall constitute an assignment and grant of security interest to the Lender in such Excepted Rights in Collateral:

(i) all payments of any indemnity under the Lease or under the Tax Indemnity Agreement (as defined in the Lease) which are payable to the Borrower for its own account;

(ii) any insurance proceeds payable under public liability policies maintained by the Lessee pursuant to the Lease which by the terms of such policies, or the terms of the Lease, are payable directly to the Borrower for its own account.

(c) Grant of Power of Attorney. The Borrower hereby authorizes the Lender to file this Agreement, or financing statements with respect to the Lender's security interest in the Collateral, with any appropriate governmental office, including, without limitation, the Interstate Commerce Commission, in order to perfect such security interest. The security interest created hereunder will terminate when the obligations of the Borrower hereunder and under the Note are discharged and the Lender will then execute termination statements and such other documents as may be necessary or appropriate to make clear upon the public records the termination of such security interest.

The Borrower hereby appoints the Lender its true and lawful attorney-in-fact, with full power of substitution, to enforce, with the prior written consent of the Borrower unless a Default shall have occurred and be continuing hereunder, the Borrower's rights as lessor under the Lease and to take any action which the Lender may deem necessary or appropriate to protect and preserve the security interest of the Lender in the Collateral. The Lender is irrevocably authorized, but not obligated, to exercise all rights and remedies to collect, compromise and release all rentals and other monies payable under the Lease (except for the Excepted Rights in the Collateral) and to deal with the Lease in such manner and at such times as the Lender may, in its discretion, deem advisable, or as otherwise set forth in this Agreement.

5. Voluntary Prepayment of the Note. The Borrower shall not make a voluntary prepayment of the Note without the prior written consent of the Lender.

6. Covenants, Representations, Warranties and Agreements of the Borrower. The Borrower covenants, represents, warrants and agrees as of the Closing Date:

(a) it will not, except with the prior written consent of the Lender, agree to any amendment to, or any waiver, discharge or termination of, any term or provision of the Lease or give any consent thereunder;

(b) on the Closing Date, the Borrower will have whatever title to the Equipment as was conveyed to it by the Seller, and the right, title and interest of the Borrower in and to all other Collateral, including the Lease, the Lease Payments and any other sums due or to become due under the Lease, will be vested in the Borrower, and the Collateral will continue to be held by the Borrower, free and clear in each instance of security interests, liens, claims, encumbrances, charges (including transportation charges) and rights of others except for (1) the rights of the Lender hereunder, (2) the rights of the Lessee under the Lease, (3) the purchase money security interest of the Seller of the Equipment, which security interest will be discharged with the Equity Shortfall and the proceeds of the Loan and (4) the Excepted Rights in the Collateral;

(c) it has full corporate power and authority to convey to the Lender a valid, perfected security interest in the Collateral as security for the obligations of the Borrower hereunder and under the Note which security interest is prior to all other liens, claims and encumbrances except for (1) the purchase money security interest of the manufacturer of the Equipment, which security interest will be discharged with the Equity Shortfall and the proceeds of the Loan, and (2) the Excepted Rights in the Collateral;

(d) there are no setoffs, or to the best of Borrower's knowledge, counterclaims or defenses on the part of the Lessee with respect to the obligation of the Lessee to make Lease Payments, and no Event of Default under the Lease has occurred and is continuing;

(e) it has delivered to the Lender a fully executed copy of the Lease and the Lease Supplement, each of which is in full force and effect, is the only agreement between the Borrower and the Lessee with respect to the Equipment, the Lease Payments and any other amounts payable under each Lease, and the Lease Supplement is and will be the only copy marked "Secured Party's Original";

(f) it will promptly provide the Lender with a copy of any notice that it receives, from time to time, under the Lease;

(g) upon the request of the Lender and, within 10 Business Days' of receipt of written notice of such request, it will execute, as appropriate, and obtain, file or cause to be filed any financing statements, continuation statements or other documents as requested by the

Lender necessary to protect and preserve the first priority, perfected security interest acquired by the Lender hereunder until all obligations hereunder or under the Note are fulfilled;

(h) this Agreement, the Lease, the Purchase Agreement, and the Note have been duly authorized, executed and delivered by the Borrower and each is a legal, valid, and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms;

(i) the execution and delivery of this Agreement, the Note, the Lease, and the Purchase Agreement executed by it for the Equipment, and the carrying out of the transactions contemplated hereby and thereby, do not constitute a default under, or result in the creation of any lien, charge, encumbrance, or security interest upon any assets of the Borrower under, any agreement or instrument to which the Borrower is a party or by which its assets may be bound or affected (excepting only the rights of the Lender hereunder and of the Lessee under the Lease);

(j) it will fulfill all its obligations under the Lease and the Purchase Agreement, and, upon the occurrence of an Event of Default under the Lease, will, upon the request of the Lender, enforce all its rights under the Lease or any of such rights as the Lease as set forth herein;

(k) its chief executive office and its records concerning the Lease are located in the State of New York, and the Borrower shall give Lender at least 30 days prior written notice of any relocation to any jurisdiction other than the State of New York;

(l) The Borrower shall not sell, assign, convey or otherwise transfer any of its right, title or interest in and to, or obligations under, this Agreement, the Note, the Lease or the Operative Agreements without the written consent of Lender, unless the assignee (A) is a Permitted Transferee (hereinafter defined), whose Net Worth (hereinafter defined) on the Permitted Transferee's Net Worth Determination Date (hereinafter defined) is not less than \$50,000,000, and (B) agrees, in a writing reasonably satisfactory to Lender, to be bound by all obligations of the Borrower under this Agreement, the Note, the Lease or the Operative Agreements. Upon any such assignment, the Borrower shall be fully discharged from its obligations under this Agreement, the Lease, the Note and the Operative Agreements, except that the Borrower shall remain liable for actual damages sustained by the Lender in accordance with clause (z) of Section 10 hereof.

As used in this Section, the following terms shall have the following meanings:

(a) "Net Worth" means, with respect to any Permitted Transferee, the excess of (1) the sum of the par value (or value stated on its books) of the issued and outstanding capital stock of all classes of its stock, plus (or minus in the case of a surplus deficit) the amount of its capital surplus and retained earnings, over (2) the amount of any of its treasury stock plus the sum of unamortized debt discount and expense, deferred charges and other intangible assets (including franchises, trademarks and goodwill), as such Net Worth is reflected in its report filed with the

Securities and Exchange Commission on Form 10-K or 10-Q or in its audited financial statements; (b) the "Permitted Transferee's Net Worth Determination Date" means the date of the Permitted Transferee's most recent periodic report filed with the Securities and Exchange Commission on Form 10-K or 10-Q, or the date of the Permitted Transferee's most recent audited financial statements prior to the date of any such sale, assignment or transfer; (c) "Permitted Transferee" means any Affiliate (hereinafter defined) of the Borrower, or any bank, insurance company, leasing company, finance company or other financial institution, organized under the laws of the United States or any state thereof and engaged in business in the United States; and (d) "Affiliate" means any Person (as defined in the Lease) controlling, controlled by or under common control with the Borrower.]

(m) if it shall acquire actual knowledge of any Default hereunder, any Event of Default under the Lease, or any condition or event which with the giving of notice or the lapse of time or both, would become such a Default or Event of Default, it shall promptly give notice thereof to the Lender (actual knowledge shall mean actual knowledge of any attending officer of the Borrower); and

(n) except as heretofore disclosed in writing to the Lender, it is acquiring its interest in the Collateral with its general corporate assets and not directly or indirectly with the assets of or in connection with any arrangement or understanding by it in any way involving either an "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code of 1954, as amended (the "Code") (other than a "governmental plan" as defined in Section 414(d) of the Code), with respect to which it is a "party in interest" within the meaning of Section 3(14) of ERISA or a "disqualified person" within the meaning of Section 4975(e)(2) of the Code.

Except as expressly set forth in this Section 6, the Borrower makes no representations, warranties or covenants with respect to the Loan or the Collateral.

7. Representations and Agreement of the Lender. The Lender covenants, represents, warrants and agrees as of the Closing Date:

(a) Except as heretofore disclosed in writing to the Borrower, it is acquiring its interest in the Loan and the Collateral for its own account, for investment and not with a view to, or for sale in connection with, any distribution thereof, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control. The Lender understands that the Note to be issued hereunder have not been registered under the Securities Act of 1933 (the "Act"), and that the Note shall bear the legend in the form set forth in Exhibit B hereto;

(b) No transfer or assignment of all or any part of its interest hereunder shall not be made unless effected in a transaction constituting an exempt transaction under the Act,

and on the express condition that the transferee or assignee shall agree to be bound by the terms and provisions of this Agreement;

(c) Except as heretofore disclosed in writing to the Borrower, the Lender has funded the Loan with its general corporate assets and not directly or indirectly with the assets of or in connection with any arrangement or understanding by it in any way involving either an "employee benefit plan" with the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code of 1954, as amended (the "Code") (other than a "governmental plan" as defined in Section 414(d) of the Code), with respect to which it is a "party in interest" within the meaning of Section 3(14) of ERISA or a "disqualified person" within the meaning of Section 4975(e)(2) of the Code; and

(d) Neither Lender, nor anyone authorized to act on its behalf, has taken or will take any action that would bring the issuance and sale of, or the commitments evidenced by, the Note, or any other transaction contemplated hereby within Section 5 of the Securities Act of 1934, as amended, or within the Trust Indenture Act of 1939, as amended.

8. Default. (a) Any of the following events shall constitute an event of default hereunder (a "Default"):

(i) payment of any part of the principal of or interest on the Note shall not be made within five Business Days of the scheduled due date;

(ii) the Borrower shall default in the due observance or performance of any other covenant, condition or provision hereof and such default shall continue for 15 days after written notice of such default from the Lender;

(iii) the Borrower shall cease doing business as a going concern (other than by merger or consolidation), make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudicated a bankrupt or an insolvent, file a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or file an answer admitting the material allegations of a petition filed against it in any such proceeding, or consent to or acquiesce in the appointment of a trustee, receiver, custodian, sequestrator, or liquidator of it or all or any substantial part of its assets or properties, or if it shall take any action looking to its dissolution or liquidation, or if within 60 days after the commencement of any proceedings against the Borrower seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed, or if within 60 days after the appointment without the Borrower's consent or acquiescence of any trustee, receiver, custodian, sequestrator, or



liquidator of it or of all or any substantial part of its assets or properties, such appointment shall not be vacated;

(iv) an Event of Default shall have occurred and be continuing under the Lease;

(v) the Borrower shall breach any provision of the Lease, and such breach shall continue for 15 days after written notice of such breach from the Lender or the Lessee; or

(vi) the Lessee shall breach the Notice of Assignment, or any insurance required to be maintained pursuant to the Lease shall expire, be cancelled or modified in any material respect.

(b) Remedies. In all instances in which a Default shall have occurred and be continuing hereunder, the Lender may (subject to the limitations set forth in this Section and Section 10 hereof) exercise any of the following remedies in addition to such other remedies as may be available at law or equity:

(i) by written notice to the Borrower declare the entire unpaid principal amount of the Note and unpaid interest thereon and any other sums owed hereunder immediately due and payable;

(ii) if a default by Lessee in any of its obligations under the Lease which constitutes a Default hereunder shall have occurred and be continuing, then Lender may (either directly or through Borrower) exercise any of the remedies available to Borrower (as Lessor) thereunder;

(iii) Lender may collect and receive any and all revenues and other cash and non-cash proceeds constituting the Collateral;

(iv) If the unpaid principal amount of the Note shall have been accelerated as provided above, Lender may, after terminating the Lease, if Lessee shall then be in default in any of its obligations thereunder, sell all or any part of the Collateral, free from any and all claims of Borrower, in one lot and as an entirety or in separate lots, at public or private sale, for cash or credit, in its discretion. Upon any such public sale, Lender itself or any holder of the Note may bid for the property offered for sale or any part thereof and the proceeds of such sale, net of costs, shall be applied to the Indebtedness secured hereby as provided hereinafter. Any such sale shall be held or conducted in a commercially reasonable manner and at such place and at such time as Lender may specify, or as may be required by law. Without limiting the generality of the foregoing, Borrower expressly agrees that in any such event, Lender, without demand of performance or other demand or notice of any kind (except the notice specified

herein and in Section 8(c) hereof) to or upon Borrower or any other person (all and each of which demands and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral or any part thereof. If any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed reasonably and properly given (i) if effectively received by Borrower at least five days before such disposition, or (ii) if deposited in the U.S. mail, by registered or certified mail, return receipt requested at least ten days before such disposition and addressed to Borrower at the address set forth in Section 11 hereof; and

(v) Lender may, in its discretion, exercise any other remedies afforded a secured party under federal law, the Uniform Commercial Code or such successor statute as may be in force from time to time in the State of New York or any other jurisdiction whose laws are applicable.

The Borrower agrees to pay all expenses incurred by the Lender, including legal expenses, in connection with the enforcement of the Lender's rights under this Section 8. The Borrower and the Lender hereby agree that the inability of the Lender to sell the Equipment promptly may cause irreparable loss to the Lender from continuing depreciation or sudden decreases in the market value thereof, and that continued ownership of the Equipment would not be essential to an effective reorganization of the Borrower in the event of entry of an order for relief under the Federal Bankruptcy Code. The Lender shall apply any amounts realized in connection with any sale, re-lease or other disposition against the unpaid principal amount of the Note and unpaid interest thereon. At such time, if any, as all sums owed hereunder, together with the expenses of obtaining such sums and interest on such sums and expenses at the Overdue Rate, but in no event at a rate greater than that permitted by applicable law, have been received by the Lender, any proceeds of insurance, sale, lease or other disposition of the Equipment by the Lender in excess of such sums, expenses and interest shall be paid to the Borrower. The rights and remedies provided for herein are cumulative and not exclusive of any other rights or remedies provided at law or in equity, and all such rights and remedies may, in the Lender's sole discretion, be exercised concurrently or successively.

(c) Certain Rights of the Borrower upon the Occurrence of an Event of Default under the Lease. Except as herein provided, if an Event of Default has occurred and is continuing under the Lease (and no other Default hereunder has occurred and is continuing), the Lender shall give the Borrower not less than five Business Days' prior written notice of the date on which the Lender intends to exercise any remedy or remedies pursuant to Section 8 hereof (the "Enforcement Date").

(d) Right of Borrower to Cure. Notwithstanding the provisions of Section 8(a) hereof, upon the occurrence of a Default pursuant to Section 8(a)(iv) hereof, including, without limitation, a default by the Lessee in the observance or performance of its obligations to pay when due any installment of Basic Rent due under the Lease, the Borrower shall have the right, prior to the Enforcement Date, to pay to the Lender an amount equal to any principal and

interest (including interest at the Overdue Rate) then due and payable on the Note or take such other actions as shall cause all such Events of Default to be cured, in which case no Default hereunder shall be deemed to have arisen under Section 8 hereof; provided, however, that the Borrower may not exercise such right in respect of more than six consecutive such Events of Default under the Lease or, in any event, more than a total of ten times throughout the term of this Agreement.

(e) Option to Prepay the Note. Whether or not the Borrower shall then have the right to cure an Event of Default under the Lease pursuant to Section 8(d) above, the Borrower may, at its option, from and after any date upon which the Lender shall have delivered written notice of an Enforcement Date in accordance with this Section 8, cure such Event of Default, by payment to the Lender of the then outstanding principal balance of the Note, together with accrued interest thereon to the date of prepayment and all other amounts owing to the Lender under the terms of this Agreement.

9. Note(s). (a) Payment on the Note. Prior to the payment in full of the Note, the Lender shall be entitled to any payments due hereunder and under the Note without being required to surrender the Note. However, the Lender agrees to make or cause to be made appropriate notation on the Note before any transfer thereof to reflect all payments of principal and interest theretofore received. The Lender, upon payment to them of all amounts payable to them hereunder and under the Note, will mark the Note "PAID" and surrender such Note to the Borrower.

(b) Replacement Notes; Mutilation or Destruction of the Notes. In the event the Lender shall request a new note or notes in different denominations, the Lender shall surrender to the Borrower the Note then held by such Lender against receipt from the Borrower of a new note or notes (herein referred to as a "New Note") in the form annexed hereto as Exhibit B which will evidence the principal amount then outstanding under the Note so surrendered, together with a revised schedule of payments, calculated as provided in Section 3 hereof, provided, however, that (i) the denominations of such New Note or Notes shall be not less than \$100,000, and (ii) such request shall not result in any liability on the part of the Borrower for increased costs or expenses.

If any Note shall become mutilated or shall be destroyed, lost or stolen, the Borrower shall, upon the written request of the holder of such Note and subject to the conditions set forth in this Section 9, execute and deliver in replacement thereof a New Note. Each New Note issued pursuant to this Section 9 in exchange for or in substitution or in lieu of an outstanding Note (herein referred to as an "Old Note") shall be dated the date of the Old Note. The Lender shall mark on each New Note (i) the dates on which principal and interest have been paid on the Old Note, (ii) all payments and prepayments of principal previously made on the Old Note which are allocable to such New Note, and (iii) the amount of each installment payable on such New Note. Interest shall be deemed to have been paid on such New Note to the date on which interest shall have been paid on the Old Note, and payments and prepayments of principal marked on such New Note (as provided above) shall be deemed to have been made thereon.

Upon the issuance of a New Note, the Borrower may require from the holder requesting such New Note the payment of a sum to reimburse the Borrower for, or provide it with the funds for, the payment of any tax or other governmental charge connected therewith which are paid or payable by the Borrower. If the Old Note being replaced has been mutilated, such Old Note shall be delivered to the Borrower. If the Old Note being replaced has been destroyed, lost or stolen, any holder of such Old Note other than the Lender shall furnish to the Borrower the indemnity agreement of such holder and a bond or surety agreement of such person as shall be satisfactory to them to save the Borrower harmless from any loss, however remote, including claims for principal of, premium, if any, and interest on the purportedly destroyed, lost or stolen Old Note, together with evidence satisfactory to the Borrower of the destruction, loss or theft of such Old Note and of the ownership thereof.

10. Limitation of Liability. Notwithstanding any other provisions of this Agreement, the obligations of the Borrower under this Agreement, including, without limitation, its obligation to pay the principal of and accrued interest on the Note shall be non-recourse obligations of the Borrower, and Lender shall have no recourse against Borrower for any deficiency in the payment of such principal or interest and Lender shall look solely to the Collateral for the payment of all principal and accrued interest due and to become due under the Note; provided, however, that nothing contained in this paragraph shall (x) impair the validity of the indebtedness evidenced by the Note, (y) in any way affect or impair the interest of any holder of the Note in any Collateral or the right of the holder to exercise its rights and remedies with respect to such Collateral following the default by Borrower in making payment under the Note or in the performance of any of the terms, covenants and conditions of the Note or this Agreement, or (z) be construed or be deemed to relieve or release Borrower or its successors and assigns from personal liability for damages actually sustained by the Lender if any of the representations and warranties set forth in this Agreement or in the Note, or any other instrument, document or certificate delivered by the Borrower pursuant to this Agreement or in connection with the making of the Loan shall prove to be false or misleading in any material respect or if any of the covenants or agreements in this Agreement (other than the covenants to pay principal of and interest (including Overdue Interest) on the Note) are breached. No provision of this Agreement shall relieve the Borrower from or cause the Lender to be liable for the obligations of the Borrower under the Lease or other transaction document.

11. Notices. All notices and other communications under the Notice of Assignment or this Agreement shall be in writing and shall be addressed to either party at the addresses first above written, or such other address as either party hereto shall communicate to the other party at its address specified above. All notices, requests, demands, requisitions and other communications hereunder shall be in writing and shall be deemed to have been duly given: (a) if delivered by hand, (b) if sent by telegraph, cable, telex or telecopier and, in addition thereto, sent by commercial air courier service, or (3) if sent by certified mail, return receipt requested, to the party to whom such notice is intended to be given. Any communication delivered by hand or sent by telegraph, cable, telex or telecopier and, in addition thereto, commercial courier service, shall be deemed to have been duly given and received on the next succeeding Business Day following the day on which it was so sent. Any communication

delivered by certified mail, return receipt requested, shall be deemed to have been duly given and received on the third Business Day following the day on which it was so sent.

12. Further Assurances. The Borrower will execute and deliver all such instruments and take all such action as the Lender, from time to time, may reasonably request in order further to effectuate the purposes and to carry out the terms of this Agreement and the Note.

13. Survival. All agreements, representations and warranties contained herein, in the Lease, and in certificates and other instruments delivered pursuant hereto and thereto shall survive the execution and delivery of this Agreement and the issue, sale and delivery of the Note and the purchase thereof pursuant hereto, and shall continue in effect so long as any Note issued in connection with the transactions contemplated hereby is outstanding and unpaid, whether or not the Borrower shall have filed a petition under the Federal Bankruptcy Code, an order for relief of the Borrower under such Code shall have been entered, or a trustee, receiver, custodian or agent shall have been appointed for the Borrower or its property. All agreements, representations and warranties in this Agreement shall bind the party making the same, and its successors and assigns, and shall inure to the benefit of and be enforceable by each party for whom made, and their respective successors and assigns.

14. Lender's Liens. Lender covenants and agrees that the Equipment will remain free of Lender Liens during the term of the Loan. As used in this Section, the term "Lender Liens" shall mean liens arising as a result of (i) claims or judgments against Lender not related to the transactions contemplated by this Agreement or the Lease, or (ii) the acts or omissions of Lender (x) not related to the transactions contemplated by this Agreement or the Lease, or (y) prohibited under this Agreement or the Lease; provided, however, that nothing contained herein shall limit the ability of the Lender to assign or grant participations in this Loan in accordance with Section 18 hereof.

15. Execution; Controlling Law; Successors and Assigns. This Agreement may be executed in one or more counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts, together, shall constitute one and the same agreement, which shall be sufficiently evidenced by one of such original counterparts. This Agreement shall be governed by and be construed in accordance with the laws of the State of New York and shall inure to the benefit of and be binding upon the Borrower and the Lender and their respective successors and assigns.

16. Changes, Waivers. Neither this Agreement nor any provision of the Note may be changed, waived, discharged or terminated orally, but only by an agreement in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. No failure or delay by the Lender or any holder of the Note in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

17. Separability. In case any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

18. Transfer by Lender. The Lender may at any time assign or grant participations in all or any portion of the Note and this Agreement, provided that (i) no such assignment by Lender shall require that payment by the Lessee be directed to more than one person or entity as agent for all such successors and assigns and (ii) such assignment or grant of participation would not violate ERISA, the Act or any state securities law.

19. Lender's Records Dispositive. In the event of a dispute regarding the amount of, timing of, or absence of any payment of Basic Rent, the accounting records of the Lender shall be controlling.

20. Headings. The headings of sections herein are inserted for convenience only and form no part of this Agreement.

21. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter hereof, and supersedes in its entirety any and all prior agreements relating to the subject matter hereof.

21. Right of Lender to Perform for Borrower and Lessee. If either Borrower or the Lessee defaults in its respective obligations under the Lease, Lender, after notice to the Borrower and the Borrower's failure to cure such default, may, at its option, perform any such obligation and may, without limiting the generality of the foregoing, obtain insurance and pay all taxes, assessments, and charges levied on the Equipment or for the storage, maintenance or repair thereof. Any insurance premiums, taxes, assessments and charges so paid or losses incurred by Lender as a result of any nonperformance by either Borrower or the Lessee of its obligations under the Lease shall be secured by this Agreement and the Collateral, and shall be payable by Borrower on Lender's demand, with interest at the Overdue Rate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Lender: HITACHI CREDIT AMERICA CORP.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Borrower: KEYCORP LEASING LTD.

By: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Lender: HITACHI CREDIT AMERICA CORP.

By: W. H. Begen

Title: SVP + COO

Borrower: KEYCORP LEASING LTD.

By: \_\_\_\_\_

Title: \_\_\_\_\_

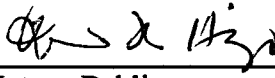


STATE OF CONNECTICUT )

: ss.: Town of Greenwich

COUNTY OF FAIRFIELD )

On this 27 day of Dec, 1991, before me personally appeared William H. BESGEN, to me personally known, who, being by me duly sworn, says that he ~~or she~~ is an Executive Vice President of Hitachi Credit America Corp., that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he ~~or she~~ acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

[Notary Seal]

KAREN R. HIGO  
NOTARY PUBLIC  
MY COMMISSION EXPIRES APR 30, 1996

IN WITNESS WHEREOF, the parties hereto have executed  
this Agreement as of the date first written above.

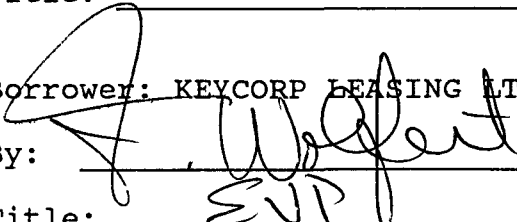
Lender: HITACHI CREDIT AMERICA CORP.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Borrower: KEYCORP LEASING LTD.

By:  \_\_\_\_\_

Title:    
EVP \_\_\_\_\_

STATE OF NEW YORK)  
: ss.:  
COUNTY OF ALBANY )

On this 24 day of December, 1991, before me personally appeared Frederick E. Wolfert, to me personally known, who being by me duly sworn, says that he is Executive Vice President of KeyCorp Leasing Ltd., that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission Expires:

[Notary Seal]

Mark P Maraglio  
Notary Public  
MARK P MARAGLIO  
Notary Public, State of New York  
No 4643412  
Qualified in Greene County  
Commission Expires March 30, 1993

STATE OF CONNECTICUT )  
: ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of December, 1991, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is \_\_\_\_\_ of Hitachi Credit America Corp., that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission Expires:

[Notary Seal]

\_\_\_\_\_  
Notary Public

## EXHIBIT B

THIS NON-RECOURSE SECURED PROMISSORY NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND NO TRANSFER HEREOF MAY BE EFFECTED UNLESS THE TRANSACTION RELATING THERETO SHALL BE EXEMPT WITHIN THE MEANING OF SUCH ACT AND THE RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION ADOPTED THEREUNDER.

### NON-RECOURSE SECURED PROMISSORY NOTE

\$2,428,120.80

December 27, 1991  
New York, New York

FOR VALUE RECEIVED, the undersigned, KEYCORP LEASING LTD. (the "Borrower"), hereby promises to pay to the order of HITACHI CREDIT AMERICA CORP. (the "Lender") at the principal office of the Lender at 777 West Putnam Avenue, Greenwich, CT 06830, or such other address as the Lender shall designate, the principal sum of Two Million, Four Hundred Twenty-Eight Thousand, One Hundred Twenty and 80/100 Dollars with interest on the unpaid balance thereof from the date hereof at the rate of nine and three-quarters percent (9.75%) per annum.

Principal and interest shall be payable in 114 consecutive monthly installments of principal and interest payable on the twenty-seventh day of each month, consisting of 113 payments of \$32,775.00 each, commencing January 27, 1992 and ending May 27, 2001, followed by one payment of \$27,274.47 on June 27, 1991, all as set forth in the loan amortization schedule attached hereto as Schedule 1, except that the last such installment shall be in an amount sufficient to pay in full the unpaid principal of this Non-Recourse Secured Promissory Note and interest thereon accrued to the date of payment.

Past due principal installments shall bear interest computed at a rate per annum equal to the sum of (a) the base rate, as announced by Citibank, N.A. at its principal office in New York City on the date of such default and (b) 2%, until paid but in no event greater than as may be permitted by applicable law. Principal of and interest on this Non-Recourse Secured Promissory Note shall be payable in lawful money of the United States of America.

This Non-Recourse Secured Promissory Note is issued under and pursuant to a Security and Loan Agreement, dated as of December 27, 1991, between the Lender and the Borrower (the "Loan Agreement"), to which agreement reference is hereby made for a statement of the terms and conditions governing this Non-Recourse Secured Promissory Note and by which the loan evidenced hereby was made. This Non-Recourse Secured Promissory Note is not subject to prepayment except as provided for in the Loan Agreement.

Notwithstanding any other provision of this Non-Recourse Secured Promissory Note and the Loan Agreement, the obligations of the Borrower under the Loan Agreement, including, without limitation, its obligation to pay principal and interest on this Non-Recourse Secured Promissory Note is payable solely out of the Collateral (as defined in the Loan Agreement) in which Lender has been granted a security interest under the Loan Agreement and no personal liability may be asserted by Lender or any holder of this Non-Recourse Secured Promissory Note against Borrower for the principal of or accrued interest on this Non-Recourse Secured Promissory Note; provided, however, that nothing contained in this paragraph shall (x) impair the validity of the indebtedness evidenced by this Non-Recourse Secured Promissory Note, (y) in any way affect or impair the interest of the holder in any Collateral given to secure payment of this Non-Recourse Secured Promissory Note or the right of the holder to exercise its rights and remedies with respect to such Collateral following the default by Borrower in making the payment hereinabove set forth or in the performance of any of the terms, covenants and conditions of this Non-Recourse Secured Promissory Note, or (z) be construed or be deemed to relieve or release Borrower or its heirs, successors and assigns from personal liability for damages actually sustained by the Lender if any of the representations and warranties set forth in the Loan Agreement, this Non-Recourse Secured Promissory Note, or any other instrument, document or certificate delivered by the Borrower pursuant to the Loan Agreement or in connection with the making of the loan evidenced by this Non-Recourse Note shall prove to be false or misleading in any material respect or if any of the covenants or agreements in the Loan Agreement are breached.

The Borrower waives presentment and demand for payment, notice of dishonor, protest and notice of protest of this Non-Recourse Secured Promissory Note, and shall pay all costs of collection when incurred, including reasonable attorneys' fees.

The provisions of this Non-Recourse Secured Promissory Note shall inure to the benefit of and be binding upon any successor to the Borrower and shall extend to any holder hereof. This Non-Recourse Secured Promissory Note and the rights of the holders thereof shall be governed by New York Law.

KEYCORP LEASING LTD.

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT C

NOTICE OF ASSIGNMENT

December 16, 1991

Westmoreland Coal Company  
700 The Bellevue  
200 South Broad Street  
Philadelphia, Pennsylvania 19102

Dear Sirs:

Reference is made to the Lease Agreement dated as of October 1, 1991 and Lease Supplement No. 1 thereto between Keycorp Leasing Ltd. ("Keycorp") as Lessor and Westmoreland Coal Company, as Lessee (the Lease Agreement to the extent, but only to the extent of Supplement No. 1 thereto, the "Lease").

Please be advised that Keycorp has assigned all rental and other payments under the Lease including, but not limited to, rental and lease payments, casualty loss or termination payments, accelerated payments upon default, proceeds of sale or other disposal of the equipment leased under the Lease (the "Equipment"), late charges, attorneys' fees and expenses of collection and enforcement of the Lease (all hereinafter referred to as "Payments"), effective December 20, 1991 to Hitachi Credit America Corp. (the "Secured Party"). This is to notify you of the assignment and to authorize and irrevocably instruct you to send via wire transfer all Payments due and payable on or after December 23, 1991 to the account of the Secured Party set forth below.

Dai-ichi Kangyo Bank, Ltd.  
New York Branch  
One World Trade Center, Suite 4911  
New York, New York 10048  
Acct. No. 15740000316  
ABA No. 026004307

Future invoices will be received from Keycorp in the normal manner and will indicate that the remittance is to be made to as set forth above, however, Lessee must make Payments as required hereunder irrespective of whether Lessee receives such invoices.

In addition, this letter will confirm your agreement that the Equipment has been accepted for all purposes of the Lease. The Lease is for a period of 240 months and provides that rental payments will commence January 23, 1992 and will end December 23, 2012. On December 23, 1991, there will be 240 monthly rentals remaining to be paid under the Lease, of which the

Secured Party will receive 120 consecutive monthly payments of \$32,775.00 each, commencing January 23, 1992 and aggregate rental payments of \$3,933,000.00.

Please also be advised that the Secured Party shall have all of the benefits of the "Assignee" as set forth in paragraph 12(c) of the Lease, that the term "Lessor" as used in the Lease shall mean the Secured Party and that the Secured Party is authorized to exercise all rights of the Lessor under the Lease. Notwithstanding anything contained herein to the contrary, Keycorp must continue to perform all obligations of Lessor and is not relieved from any obligations of Lessor under the Lease provided, however, that the Lessee shall follow all directions and instructions received from the Secured Party even if conflicting instructions are received from Keycorp.

No revocation or modification of any of the instructions and authorizations contained herein shall be effective unless the Secured Party shall have consented in writing thereto.

The Lessor and the Secured Party hereby also request that Lessee send to the Secured Party, at its above address, copies of all notices and other documents that Lessee shall furnish to Lessor pursuant to the terms of the Lease including, without limitation, financial statements furnished pursuant to Section 16(b) of the Lease.

The Lessee, by its signature, acknowledges and agrees that: the Lessee will make rental payments as outlined above; the Lease is in full force and effect; no defaults exist on the part of the Lessee; the Lessee will continue to pay rentals as provided in the Lease; Keycorp is fully performing at the present time all the matters it has obligated itself to perform as provided in the Lease; Lessee's obligation to make all Payments under the Lease and the rights of the Lessor in and to such amounts, shall be absolute and unconditional as set forth in Section 3(c) of the Lease; no defaults exist, to the best knowledge of Lessee, on the part of Lessor in the performance of its obligations under the Lease; there have been no amendments or modifications of the Lease and Lessee will not modify or consent to any modification of the terms of the Lease without the prior written consent of the Secured Party; and the Secured Party shall not have any affirmative obligation under the Lease except to take no action to impair Lessee's quiet enjoyment and use of the Equipment so long as the Lessee is not in default under the terms of the Lease.

NOTHING CONTAINED HEREIN IS IN DEROGATION OF OR MITIGATES AGAINST LESSEE'S RIGHTS AS DEFINED IN THE LEASE. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO RELIEVE LESSOR OF ANY OF ITS OBLIGATIONS TO LESSEE UNDER THE LEASE.

Sincerely,

KEYCORP LEASING LTD.

By: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGED BY:

WESTMORELAND COAL COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



EXHIBIT D

CERTIFICATE OF THE CORPORATE SECRETARY OF THE BORROWER

I, \_\_\_\_\_, a \_\_\_\_\_ of KEYCORP LEASING LTD.,  
a Delaware corporation (the "Company"), DO HEREBY CERTIFY as follows:

1. There have been no amendments to or changes in the Certificate of Incorporation or the By-laws of the Company since \_\_\_\_\_ and \_\_\_\_\_, respectively, and such Certificate and By-laws are attached hereto as Exhibits A and B.

2. Attached hereto as Exhibit C is a full, true and complete copy of authorization for the transactions contemplated by the Security and Loan Agreement dated as of December 23, 1991 between the Company and Hitachi Credit America Corp. and said authorization has not been amended or rescinded but remains in full force and effect on the date hereof.

3. The chief executive office and records of the Company are located in the State of New York.

4. The following persons are duly elected (or appointed), qualified and acting officers of the Company, holding the offices in the Company indicated opposite their respective names, and have held such offices continuously since \_\_\_\_\_, 19\_\_, and the signatures appearing opposite their respective names are the genuine signatures of such persons, respectively.

<u>Name</u>	<u>Office</u>	<u>Signature</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Company this \_\_\_\_ day of \_\_\_\_\_, 19\_\_

[CORPORATE SEAL]

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

EXHIBIT E

CERTIFICATE OF THE CORPORATE SECRETARY OF THE LESSEE

I, \_\_\_\_\_, a \_\_\_\_\_ of WESTMORELAND COAL COMPANY, a Delaware corporation (the "Lessee"), DO HEREBY CERTIFY as follows:

1. There have been no amendments to or changes in the Certificate of Incorporation or the By-laws of the Lessee since \_\_\_\_\_ and \_\_\_\_\_, respectively, and such Certificate and By-laws are attached hereto as Exhibits A and B.

2. Attached hereto as Exhibit C is a full, true and complete copy of authorization for the transactions contemplated by the Lease Agreement, dated as of October 1, 1991 between Keycorp Leasing Ltd., as lessor, and the said authorization has not been amended or rescinded but remains in full force and effect on the date hereof.

3. The following persons are duly elected (or appointed), qualified and acting officers of the Lessee, holding the offices in the Lessee indicated opposite their respective names, and have held such offices continuously since \_\_\_\_\_, 19\_\_, and the signatures appearing opposite their respective names are the genuine signatures of such persons, respectively.

<u>Name</u>	<u>Office</u>	<u>Signature</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Lessee this \_\_\_\_ day of \_\_\_\_\_, 19\_\_

[CORPORATE SEAL]

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Lessee this \_\_\_\_ day of \_\_\_\_\_, 19\_\_

[CORPORATE SEAL]

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)